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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL THOMAS BRUNO,

Defendant and Appellant.

D070426

(Super. Ct. No. SCE353334)

APPEAL from a judgment of the Superior Court of San Diego County, Lorna A. Alksne, Judge. Affirmed.

Jason L. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Michael Thomas Bruno of one count of assault with a deadly weapon (Pen. Code,¹ § 245, subd. (a)(1)) and found that Bruno had personally inflicted

¹ All further statutory references are to the Penal Code unless otherwise specified.

great bodily injury on the victim (§ 12022.7, subd. (a)) and used a deadly or dangerous weapon (§ 1192.7, subd. (c)(23)).

Bruno later admitted three prison priors (§ 667.5, subd. (b)), two serious felony prior convictions (§ 667, subd. (a)(1)) and two strike priors (§ 667, subds. (b)-(i)).

The court struck one of the "strike" priors and all three of the prison priors. The court also struck the punishment for the serious bodily injury enhancement. Bruno was sentenced to a determinate term of 18 years in prison.

Bruno filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) indicating he has not been able to identify any arguable issue for reversal on appeal. Counsel asks this court to review the record for error as required by *Wende*.

We offered Bruno the opportunity to file his own brief on appeal. He has done so and raises a number of issues regarding the use of his prior convictions and sentencing. We will address the supplemental brief filed by Bruno later in this opinion.

STATEMENT OF FACTS

The offense in this case arises out of a fight which took place outside a bar in Lemon Grove. On that occasion Bruno and the victim, who was intoxicated, got into a confrontation. Bruno walked away, but returned shortly thereafter. Bruno and the victim then engaged in a fistfight.

The fight paused for a few moments when Bruno again walked away. Bruno again returned to the fight, this time with a knife. He stabbed the victim a number of times.

When police arrived Bruno was contacted. They asked about the location of the knife. Bruno replied: "Don't worry about it. You'll never find it." Officers later found the knife on the roof of a nearby business.

DISCUSSION

We will first discuss the issues raised in Bruno's supplemental brief. First, he contends one of his serious felony priors was no longer valid. He argues the prior burglary conviction is now a misdemeanor in light of Proposition 47 (§ 1170.18). The record does not contain any challenge to his prior convictions. Nor does there appear to be any indication of court action to reduce any of his prior convictions to misdemeanors. The record is silent in this regard. In any event, the "burglary" prior is for residential burglary (§§ 459, 460). There is no reason to believe such conviction is even subject to the resentencing procedures of section 1170.18.

Bruno makes a similar argument about his prison prior for drug possession. Again there is nothing in the record to indicate the conviction has, or could be reduced to a misdemeanor. In any event, the court struck all of the prison priors.

Finally, Bruno contends the trial court abused its discretion in selecting the upper term for his offense given his arguments about the prior convictions. Once more the record is silent. If Bruno had objections to the court's sentencing choices, such objections must first be raised in the trial court. (*People v. Scott* (1994) 9 Cal.4th 331, 356-358.)

Turning next to counsel's brief, counsel has complied with *Anders v. California* (1967) 386 U.S. 738 (*Anders*) by identifying two possible issues for the court's consideration in our review of the record:

1. Whether the trial court erred in allowing Bruno's pre-*Miranda*² statement about the location of the knife;

2. Whether the court abused its discretion in accepting a jury panel of 49 people, which only included 16 males.

We have reviewed the entire record pursuant to *Wende, supra*, 25 Cal.3d 436, and *Anders, supra* 386 U.S. 738. We have not discovered any arguable issues for reversal on appeal. Competent counsel represented Bruno on this appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

HALLER, J.

² *Miranda v. Arizona* (1966) 384 U.S. 436.